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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1967

No. [redacted]783

IN THE MATTER OF THE WOODMAR REALTY COMPANY, a Corporation,
Debtor,

* * * * *

CITY OF HAMMOND, INDIANA, a Municipal Corporation, ~~and WOODMAR REALTY COMPANY, an Indiana Corporation,~~
Petitioners,

vs.

WALTER A. McLEAN, TRUSTEE,
Respondent.

In Proceedings for the Reorganization of a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT CITY OF HAMMOND, INDIANA, PETITIONER.

RESPONDENT'S BRIEF IN OPPOSITION.

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CITY OF HAMMOND, INDIANA, a Municipal Corporation, and WOODMAR REALTY COMPANY, an Indiana Corporation,
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Respondent.

In Proceedings for the Reorganization of a Corporation.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
CITY OF HAMMOND, INDIANA, PETITIONER.

RESPONDENT'S BRIEF IN OPPOSITION.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

On January 13, 1941, Woodmar Realty Company, one of the petitioners in this court, was placed in corporate reorganization under a Chapter X proceedings.

In February 1953 corporate reorganization was terminated and the matter was placed in bankruptcy in accordance with Section 236(2) of the Bankruptcy Act. In September 1955 Walter A. McLean, as trustee, filed a final report recommending the allowance and payment of approximately 313 claims all based upon special improvement bonds issued by the City of Hammond, Indiana, and constituting liens on the bankrupt's property.

Since that time the matter has been in constant litigation. Woodmar Realty Company, the bankrupt, has filed nine appeals to the Court of Appeals, numerous petitions for rehearing, and now three petitions for certiorari to this court.

As set out, in excess of 300 lien claims were filed in this bankruptcy. Until 1965 no lien claimant ever filed any objections to the proceedings. In other words, over the years since 1955 to 1965, no one other than Woodmar Realty Company had any objection to the proceedings in this administration.

In July 1965 the trustee in bankruptcy filed a Trustee's Supplemental Final Report alleging in substance that all of the bankrupt's property had been liquidated—that all of the pending claims had been acted upon—and that the time for appeal had passed—and that the bankruptcy matter,—after 26 years—was ready for closing. At that time the trustee and trustee's counsel filed petitions for allowances of fees and expenses, and the trustee asked for their determination, and that he then be authorized to make distribution to the lien claimants.

Hearing was set on such report and petitions for October 22, 1965.

The City of Hammond owns three lien claims on special assessment bonds in this matter and such claims constitute its only interest in this proceedings. All of the 300 lien claims, including these three owned by the City of Hammond, were allowed by separate court order in 1963 in specific amounts, and no appeal was ever taken by anyone from the allowance of such claims. The amount of the allowances of such claims, the date filed, and the number of such claims, is as follows:

Claim No. 261	Filed: 1941	$ 355.81
Claim No. 450	Filed: 1953	$1,903.12
Claim No. 507	Filed: 1953	$3,709.35
Total Allowance Fixed by Court Order		$5,968.28

These three claims were filed by the City of Hammond by Attorney Floyd Murray of Hammond, Indiana, and Attorney Murray represented this lien claimant throughout the entire pendency of the bankruptcy. During this time, the City of Hammond made no objection of any kind or nature throughout any aspect of the proceedings. This same monetary allowance was recommended to the court in the trustee's report filed in September 1955, and the City of Hammond, over the interim of ten years, made no objections to the bankruptcy administration or to the allowance of its claims.

The record shows that the recommended allocation of cash to all unpaid bonds and coupons in this bankruptcy is in the sum of $443,775.78—and that the City of Hammond's interest in the total amount of such cash allocations amounts to 1.3 0/0 of the total amount recommended.

On October 22, 1965, the City of Hammond filed objections to the trustee's supplemental final report and to

the trustee's fees, and to the petition for fees for trustee's counsel.

No other lien claimant—other than the bankrupt, Woodmar Realty Company—objected to the report or the fee petitions.

Peculiarly, the objections to the proceedings filed by the City of Hammond followed the same line as the objections formerly presented by the bankrupt. Although its three claims had been allowed in certain specific amounts, the City of Hammond urged that the claims were barred by the Statute of Limitations, that such claims were barred by reason of merger in judgment, and that such claims were improperly allowed in that they should have been each tried in open court as adversary proceedings.

Had the objections filed by the City of Hammond been sustained—the recovery by the City of Hammond necessarily would have not occurred.

On January 19, 1966, the District Court handed down an opinion denying the objections of the City of Hammond. Such opinion is attached to this petition as Appendix "C" at page 15-a, and on February 10, 1966, the District Court entered an order denying such objections, and such order is appended to the petition as Exhibit "B" at page 9-a.

The City of Hammond then appealed to the Court of Appeals and on June 22, 1967, the Court of Appeals affirmed the District Court.

The respondent respectfully submits that the City of Hammond—lien claimant—holding a 1.3 percent of the lien indebtedness herein involved, is not a bona fide litigant, but that it is, through its City Attorney—permitting itself to be used as a "stooge" for Woodmar Realty Company.

OPINIONS BELOW.

The Court of Appeals on June 22, 1967, affirmed the order of the District Court. A copy of the Court of Appeals opinion is set out at pages 1-a to 8-a, Appendix "A" attached to the petition.

The District Court order appealed from to the Court of Appeals is set out at Appendix "B" at page 9-a of the Appendix, and the District Court's opinion approving the Trustee's Supplemental Final Report and ordering distribution is set out in Appendix "C" at page 15-a of the Appendix.

JURISDICTION.

The judgment of the Court of Appeals sought to be reviewed in this matter is dated June 22, 1967. On September 20, 1967, on the 90th day allowed by the court for the filing of a petition for certiorari, the City of Hammond filed as petition for an extension of time for the filing of such a petition. The petition for extension of time was granted and the time was extended to and including November 4, 1967. On November 4, 1967, the petition in this matter was filed.

Specifically, the court's jurisdiction is based upon 11 U.S.C. (Bankruptcy), Sec. 47(c), and 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED FOR REVIEW.

The petitioner alleges that the following questions are presented for review:

(1) Whether or not the Court of Appeals erred in approving the trustee's supplemental final report and in failing to require the lien claimants to prove their claims by the presentation of evidence at a proper hearing.

(2) Whether or not the Court of Appeals erred in failing to follow the requirements of Rule 52 of the Federal Rules of Civil Procedure.

(3) Whether or not the Court of Appeals erred in denying the City of Hammond's objections to the trustee's supplemental final report, etc., in approving the same, and in ordering payment of recommended "allocations" in favor of some 300 lien claimants, without pleading or proof.

(4) Whether or not the Court of Appeals erred in approving the trustee's supplemental final report as well as the trustee's fee petition and the trustee's counsel's fee petition at the hearing on October 22, 1965, since the City of Hammond, a creditor, did not receive notice of hearing as required by law.

(5) Whether or not the Court of Appeals erred in approving the fee petitions of the trustee and his counsel where the fee petitions failed to specify, in the detail required by law, the work allegedly performed by said fiduciaries.

(6) Whether or not the Court of Appeals erred in granting the fee petitions of the trustee and his counsel, where under the undisputed evidence in the record, many of the activities for which fees are sought were performed not for the benefit of the estate but for special interests adverse to the estate.

CONSTITUTIONAL RULES, PROVISIONS, ETC. INVOLVED.

Rule 56 of the Federal Rules of Civil Procedure provides in pertinent part as follows:

> Rule 56. Summary Judgment.
>
> (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. As amended December 27, 1946, effective March 19, 1948.
>
> (b) For Defending Party. A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
>
> (28 USCA, Rule 56, page 302)

Rule 16 of the Federal Rules of Civil Procedure provides in pertinent part:

> Rule 16. Pre-Trial Procedure; Formulating Issues.
>
> In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider
>
> (1) The simplification of the issues;
>
> (2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

(28 USCA, Rule 16, page 591)

Rule 52(a) of the Federal Rules of Civil Procedure provides in pertinent part as follows:

Rule 52. Findings by the Court.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for find-

ings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended December 27, 1946, effective March 19, 1948.

(28 USCA, Rule 52(a), p. 14)

CONCISE STATEMENT OF THE CASE.

I.

The Respondent respectfully points out that the petitioner in this matter, in setting out in his petition "A Concise Statement of the Case"—at pages 9 to 17, sets out a word for word copy of pages 5 to 14 of its brief as filed in the Court of Appeals; that likewise, the petitioner sets out as the remainder of its "Concise Statement of the Case" at pages 18 to 28 a word for word copy of pages 34 to 45 of its brief filed on the appeal to the Court of Appeals. The City of Hammond briefs filed in the Court of Appeals cause are a part of the record in this matter.

II.

In January 1941 an involuntary petition was filed under Chapter X of the Bankruptcy Act in the United States District Court for the Northern District of Indiana against Woodmar Realty Company. At that time Woodmar Realty Company was a dormant, inactive corporation. Its sole assets consisted of 1540 vacant lots and 12 unsubdivided blocks—all heavily encumbered with general property taxes, a bondholders' first mortgage,—long in arrears in the principal sum of about $300,000.00, and with long delinquent special improvement bonds under some 50 different City of Hammond special improvement loans (the total principal indebtedness on the special assessments was then approximately $477,000.00). No payment had been made on any of the indebtedness after 1930.

Upon the filing of a petition under Chapter X, it was first thought that corporate reorganization was possible

but in 1953, after extensive hearings in the District Court —the matter was placed in a straight bankruptcy proceedings, in accordance with Sec. 236(2) of the Bankruptcy Act.

During the proceedings in corporate reorganization, the trustee, acting under orders of court, sold all of the bankrupt's real estate "free and clear of encumbrances" so that all of the bankrupt's assets were in cash—and such cash proceeds were impressed with the liens of the unpaid special assessment rolls under some 50 different improvement resolutions.

Likewise, in the corporate reorganization proceedings and prior to 1953 the tax liability and the mortgage liability were eliminated by compromise so that the only indebtedness in the bankruptcy estate with the advent of straight bankruptcy in 1953 was the unpaid special assessment liens.

In the years to 1955—many claims were filed on the special assessment liens. In 1953 the District Court authorized the appointment of a certified public accountant for the making of an auditing study so that the net amount received from the sale of the bankrupt's real estate could be determined and so that such sum could then be properly apportioned to the lien indebtedness existing on the property sold.

In September 1955, the trustee filed a report with the court alleging that in his opinion there were 313 lien claims which should be allowed and the trustee further reported to the court that as a result of the study made by the auditors that the amounts due on each unpaid bond and coupon constituting a lien on the bankrupt's property had been established. At that time the trustee recom-

mended the allowance of such claims and the allocation of cash as determined by the auditing study to the different unpaid bonds and coupons.

The City of Hammond at that time owned three lien claims, and such claims, with the amount recommended for allowance by the trustee was as follows:

Claim No. 207	$ 355.81
Claim No. 450	1,903.12
Claim No. 507	3,709.35

This trustee's report was set for hearing and at that time Woodmar Realty Company then appeared and filed objections to about 274 out of the 313 pending lien claims. The record likewise shows that the Woodmar Realty Company filed objections to the three City of Hammond claims heretofore designated.

The objections filed to all of these claims by Woodmar Realty Company were virtually the same objections to each claim, and the objections thereto in each instance raised the same legal and factual problems and defenses. The trustee moved to strike out Woodmar's objections to claims on the theory that Woodmar was not a party in interest. Such motion was sustained by the District Court. An appeal was taken to the Court of Appeals and the District Court judgment was reversed on the theory that if Woodmar was successful in its objections to all lien claims—then it would be entitled to all of the funds in the bankruptcy—and ruled that Woodmar was a party in interest to object to claims.

Upon remand in the District Court, it was decided that a typical lien claim should be selected as a test case to be tried to determine rules of law "to cover all lien claims". The bankrupt had filed 15 objections to Claim

441 and this claim was selected as a "test claim". This "test case" was thereafter tried by the court and Woodmar's objections were held to be entirely without merit. The decision on Claim 441 was then affirmed on appeal.

After the decision on that test claim the trustee filed a motion for summary judgment seeking to apply the decision on the test claim to all of the other claims—and to the bankrupt's objections on such claims—the trustee contending in his motion that the remaining claims and the objections thereto raised the same legal and factual problem and that, in truth, there was no genuine issue of fact, and that the only remaining thing to be decided was a question of law.

Thereafter, on November 29, 1962, the District Court, in a pretrial order—required that Woodmar Realty Company file statements as to each claim, as to how and in what manner each of the remaining claims differed from the "test claim 441", and how and in what manner the bankrupt's objections to the remaining claims raised different evidentiary and legal issues. In the trustee's amended final report the trustee had set out and recommended an allowance on each bond and coupon and on each claim pending in the bankruptcy matter.

The pretrial order of November 29, 1962 likewise stated that on the trial of the "test claim 441" the court had established a formula and a procedure for the computation of the amounts due on the pending lien claims. Such order then required of the bankrupt that it should, as to each pending claim, compute the amount due on such claim using the formula established by the court—and then provided that if Woodmar failed to compute the amount due on the claims using such formula, then such

failure would constitute an admission that the amounts set forth by the trustee in his amended final report was correct.

Thereafter, the District Court judge, using the decision on the "test claim 441"—considered all of the remaining 304 lien claims in the light of the entire record, and in the further light of Woodmar's responses to the pretrial order—and then, after a study of each of the remaining claims, the court, in two long, detailed opinions and orders, on May 20, 1963, and on September 23, 1963—decided—that on the basis of the test claim and the responses—that in truth and fact the bankrupt's objections to all lien claims were without merit and that there was no undecided genuine issue of material facts remaining for decision—then, on the basis of other matters in the record, including the proof of the allocations of cash to each bond and coupon—held that the bankrupt's objections to all claims should be denied and that all such claims should be allowed in the amount recommended for allowance by the trustee. The opinion and order of the District Court of May 20, 1963, is found in the Appellant's Appendix in Cause No. 15694 and 15695, Court of Appeals, at pages 458-500, and such Appendix is now a part of the record in this court. Likewise, the District Court's opinion of September 23, 1963, is found in the Appellant's Appendix, Cause No. 15694 and 15695 of the Court of Appeals, at pages 500-556, and such Appendix is a part of the record in this court.

Thereafter, in 1953 all of the pending claims, including the three lien claims owned by the City of Hammond, were allowed by separate court order—and no appeal was ever taken from such orders. The three lien claims

of the City of Hammond were filed for such claimant by Attorney Floyd Murray of Hammond, Indiana. Throughout the pendency of this bankruptcy matter—the City of Hammond filed no objection to any aspect of such litigation and at no time appeared by any attorney other than Attorney Floyd Murray.

In July 1965 the Trustee filed his Supplemental Final Report alleging that the bankruptcy estate was completely administered; that all lien claims had been allowed; that the bankrupt's objections to all lien claims had been held to be without merit, and that there were no undisposed of claims or objections in the District Court, and then alleged that the matter was ready for closing.

The trustee and trustee's counsel filed petitions for allowances of fees and expenses. The matter was set for hearing on October 22, 1965. Hearing was had, and on January 19, 1966, the District Court handed down an opinion approving the trustee's supplemental final report and denying the objections of the City of Hammond and the objections of Woodmar Realty Company to both the report and the fee petitions. The District Court likewise determined the amount of the fee allowances and then ordered distribution. This opinion is found at Appendix "C" at page 15-a attached to the petition. On February 10, 1966, the District Court entered an order on such opinion and such order is found as Appendix "B" at page 9-a attached hereto. On June 22, 1967, the Court of Appeals entered an order affirming the District Court, and such order is attached to this petition as Appendix "A" at page 1-a.

ARGUMENT.

I.

The Respondent respectfully points out that the argument set out in the petition for certiorari by the City of Hammond, at pages 29 to 50, is a word for word duplication of the argument set out at pages 52 to 73 in the City of Hammond's brief on appeal to the Court of Appeals.

Such argument states nothing new and lists no reason for the granting of the petition. Such argument relates only to matters set out in the brief on appeal.

II.

In the first question presented for review—the petitioner, City of Hammond, asks whether the Court of Appeals erred in approving the Trustee's Supplemental Final Report and in failing to require the lien claimants to prove their claims at a proper hearing.

The City of Hammond is a lien claimant whose claim, like that of all other claimants, is based upon the ownership of special improvement bonds.

It is true that the Woodmar Realty Company, throughout the many years of the pendency of this litigation, has contended that each claim had to be tried separately in an adversary hearing, but the City of Hammond's lien claims were allowed in 1963—with other claims—and for the City of Hammond to now argue and contend that the allowance of such claims was in error is a ridiculous

argument against itself. This contention with other matters throughout its brief and in this petition once again shows that the City of Hammond is merely a "stooge" for Woodmar Realty Company.

The District Court in its opinion of September 23, 1963, discussed the contention repeatedly made by the bankrupt that it had the right to an adversary hearing on each claim and says as follows:

> "it contends that the Fifth Amendment to the United States Constitution entitles it to a hearing on each Class 2 claim "in open court, with the right to be faced by and cross examine witnesses, and the right, on the part of Woodmar Realty Company, to produce evidence." Of course, hearings are held, witnesses are examined and cross-examined, and evidence is produced where genuine issues of material fact exist and Woodmar, if it raised any genuine issue of material fact, would be entitled to a hearing. But by the same token an adversary party, under Rule 56, and the Court, under Rule 16, is entitled first to test whether the alleged issues of fact are in truth specious, frivolous and immaterial. The bankrupt cannot insist on a supposed right to a hearing on each of the remaining 134 Class 2 claims, if, as contended by the trustee in his motion for summary judgment, its objections to those claims are without merit as a matter of law and no genuine issue of material fact exists."

This portion of the court's opinion is found at page 512 in the Appellant's Appendix in Cause 15694 and 15695, which is now a part of the record in this matter.

III.

The second issue raised in the petition is the question whether or not the Court of Appeals erred in failing to follow the requirements of Rule 52 of the Federal Rules of Civil Procedure. Rule 52 relates to the necessity of making special findings of fact before entering judgments on claims.

The record in this proceedings shows that the adjudication on all of the claims other than Claim 441 (which was tried and on which there were special findings) were based upon a summary judgment. An examination of the District Court's opinions of May 20, 1963, and likewise September 23, 1963, show that the District Court determined that there was no genuine issue of material fact to be decided and so no special findings were required.

In the case of *A. R. Inc.* v. *Electro-Voice,* CCA 7th Cir. 1962, 311 F. 2d 508-513, the court says:

> "The making of Findings of Fact in granting a summary judgment would be illogical since they would carry an unwarranted implication that a fact question was presented."

It clearly appears that where there are no issues of fact to be decided by the court then special findings of fact are, of course, unnecessary.

The Respondent likewise respectfully points out that the last sentence of Rule 52 provides that special findings of fact are not necessary on decisions under the summary judgment Rule No. 56 and that this portion of the Rule reads as follows:

> "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or

any other motion except as provided in Rule 41(b). As amended Dec. 27, 1946, effective March 19, 1948." (28 U.S.C.A., Rule 52(a), p. 14)

IV.

The third question presented for review is as follows:

Whether or not the Court of Appeals erred in denying the City of Hammond's objections to the trustee's supplemental final report, etc., in approving the same, and in ordering payment of recommended "allocations" in favor of some 300 lien claimants, without pleading or proof.

The City of Hammond filed six objections to the trustee's supplemental Final Report. The first objection was that it had no notice of the hearing. The respondent will discuss this objection later on in the Argument.

The 2nd, 3rd, 4th and 5th objections presented matters previously raised by Woodmar Realty Company and previously denied by the court,—such as, the necessity that each claim had to be tried separately in adversary hearings,—such as, that the claims were barred by the statute of limitations, or that the claims were merged in judgment. These are strange arguments coming from a lien claimant whose only interest is in the ownership of three lien claims allowed more than two years before the filing of the objections.

The 6th objection filed by the City of Hammond was a vague statement of the existence of a supposed danger to the City of Hammond to come about from a distribution in the Woodmar bankruptcy. At the time of the hearing, the City of Hammond was unable to present its objections and the District Court judge then gave to the City

of Hammond ten days within which to file a memorandum setting out the substance of its objections. No memorandum was ever filed.

The City of Hammond's objections were discussed in the District Court's opinion of January 19, 1966, and such discussion is found in Appendix "C", page 16-a.

The record in the bankruptcy shows that an auditing study, made by a certified public accountant, employed under orders of court, was introduced in evidence in this matter showing a description of all of the unpaid special improvement bonds—constituting liens on the bankrupt's property—together with the balance due on each bond and coupon,—and that such auditing study likewise showed an allocation of cash to each unpaid bond and coupon, together with a proportionate share due each bond of the sales price of the real estate on which such bond represented a lien, a description of each bond and coupon—the unpaid balance thereon. The allocation of cash to each bond and coupon is likewise set out in great detail in the trustee's amended final report.

Any contention that the allocations of cash to claims was made by the District Court without proof is ridiculous.

V.

The fourth question presented for review by the City of Hammond in its petition is:

> Whether or not the Court of Appeals erred in approving the trustee's supplemental final report as well as the trustee's fee petition and the trustee's counsel's fee petition at the hearing on October 22,

1965, since the City of Hammond, a creditor, did not receive notice of the hearing as required by law.

The answer to this question is that the record shows that the City of Hammond, a credit, did receive notice of such hearing.

In 1941 the City of Hammond filed Claim 261 in this bankruptcy; in 1953 it filed Claims 450 and 507. All of such claims were filed by the attorney for the City of Hammond; Attorney Floyd Murray, of Hammond, Indiana. Throughout the years from 1941 to 1965 Attorney Floyd Murray represented the lien claimant and was its attorney of record. No one else ever represented the City of Hammond, and Attorney Floyd Murray was served with a notice of the creditor's meeting of October 22, 1965, and appeared at such meeting representing the City of Hammond.

On October 22, 1965, the city attorney and the assistant city attorney appeared in the bankruptcy matter for the City of Hammond for the first time and filed a motion for a continuance of the hearing, objections to the trustee's report, and objections to the fee petitions, and when called upon to present their objections, stated that they had not had time to familiarize themselves with the matter and asked for a continuance.

The District Court held that the record showed that the attorney of record for the City of Hammond, to-wit: Attorney Floyd Murray, had received notice of the hearing.

VI.

The fifth question assigned in the City of Hammond's petition for certiorari is as follows:

> Whether or not the Court of Appeals erred in approving the fee petitions of the trustee and his counsel where the fee petitions failed to specify, in the detail required by law, the work allegedly performed by said fiduciaries.

The work done by the trustee and trustee's counsel covered a period of more than 12 years from February 1953 to July 1965. Voluminous and detailed itemized statements of the time spent and expenses incurred were attached to each petition and the petitions were then verified. The District Court, in allowing the fee petitions, said in part as follows:

> "The fee petitions were in proper form as required by Sec. 62 of the Bankruptcy Act and specified in detail the services performed and the expenses incurred."

See Appendix "C", page 299.

VII.

The sixth question presented for review by the petitioner is as follows:

> Whether or not the Court of Appeals erred in granting the fee petitions of the trustee and his counsel, where under the undisputed evidence in the record, many of the activities for which fees are sought were performed not for the benefit of the estate but for special interests adverse to the estate.

This question presents a charge never previously suggested by the City of Hammond but repeatedly made by

Woodmar Realty Company as against the fiduciaries. The question is best answered by the opinion of the District Court found in Appendix "C" attached to the petition, particularly at pages 25-a to 29-a. The Court of Appeals did not err in any respect in approving the fee allowances to the trustee and trustee's counsel.

VIII.

The Decision of the Court of Appeals Is Clearly Correct And Such Decision Should Not Be Disturbed.

As has been pointed out, the City of Hammond is not a bona fide litigant in this matter. Likewise, as pointed out, the City of Hammond's only interest is that of a lien claimant,—owning three lien claims totaling 1.3 percent of the total lien indebtedness recommended for payment.

It is difficult to understand how and why a municipal corporation should permit itself to be used in this type of litigation—in an apparent effort to lead someone not familiar with this long pending matter—to believe that the City of Hammond is a disinterested claimant with a bona fide objection.

CONCLUSION.

The Respondent respectfully submits that a careful and detailed study of this entire petition fails to show any semblance of a reason why this petition for certiorari should be filed or why it should be granted.

The decision of the Court of Appeals passes upon many problems of bankruptcy administration in a matter that has been pending for many years, and in which there has

been much useless litigation—however, such decision does not in any way violate any established precedent or decision of this court or of any of the other courts of appeals. It clearly appears that there is no important legal question of federal law requiring decision by this court.

WHEREFORE, the Respondent respectfully prays that the petition for writ of certiorari be denied.

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